

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Docket No. 12671US02

In the Application of:

Revit et al.

Electronically Filed on March 14, 2007

Serial No.: 09/803,683

Filed: March 9, 2001

For: Sound Reproduction Method and
Apparatus for Assessing Real-World Performance
of Hearing and Hearing Aids

Art Unit: 2615

Examiner: Mei, Xu

Confirmation No. 7009

PRE APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets

Respectfully submitted,

Date: March 14, 2007

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REMARKS

The present application includes claims 14, and 38-62. Claims 57-62 were withdrawn from consideration. Claims 38, 42, 46, 49, and 51-53 stand rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5,173,944 ("Begault"). Claims 39-41, 43, and 47-48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Begault in view of United States Patent No. 6,366,679 ("Steffen"). Claims 44-45, 50, and 54-56 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Begault in view of United States Patent No. 5,825,894 ("Shennib"). Claim 14 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Shennib in view of United States Patent No. 6,067,360 ("Kasai").

Begault does not anticipate claims 38, 42, 46, 49, and 51-53. See January 19, 2007 Response at pages 9-11. Begault does not describe, teach, or suggest "wherein the audio signals are representative of recordings made by a plurality of microphones that are placed at locations relative to a recording position that correspond to the locations of the plurality of loudspeakers relative to the listening position," as recited in claim 38. See *id.* Begault simply does not describe, teach or suggest that microphones 38 and 40 are "placed at locations relative to a recording position that correspond to the locations of the plurality of loudspeakers relative to the listening position." Thus, for at least this reason, the Office Action has not established a *prima facie* case of anticipation with respect to claims 38, 42, 46, 49, and 51-53.

Additionally, Begault does not describe, teach, or suggest that the "microphones during recording [face] away from a center of the recording position," as recited in claim 38. See *id.* at page 11. Thus, for at least this additional reason, the Office Action has not established a *prima facie* case of anticipation with respect to claims 38, 42, 46, 49, and 51-53.

Further, there simply is nothing in Begault that describes, teaches, or suggests that any of the speakers disclosed in Begault "generate sound that appears to, but does not, emanate from another of the plurality of loudspeakers," as recited in claim 49. See *id.* at page 11. Thus, for at least this additional reason, the Office Action has not established a *prima facie* case of anticipation with respect to claim 49.

The proposed combination of Begault and Steffen does not render claims 39-41, 43, and 47-48 unpatentable. *See id.* at pages 11-13. Neither Begault, nor Steffen, teaches or suggests “eight loudspeakers in a circle,” as recited in claim 39. *See id.* at page 12. Nor does the proposed combination teach or suggest eight loudspeakers “placed equidistant from the listening position,” as recited in claim 41. *See id.* at page 12. Also, the portions of the references relied on in the Office Action do not teach or suggest “wherein the plurality of loudspeakers are located at varying heights relative to the listening position,” as recited in claim 43. *See id.* at page 12. Further, the portions of the references relied on in the Office Action do not teach or suggest “wherein all but one of the plurality of processed audio signals comprises discrete adjusted versions of the plurality of audio signals and wherein one of the plurality of processed audio signals comprises a combination of the plurality of audio signals,” as recited in claim 47, or “wherein the combination of the plurality of audio signals comprises an equal proportion of the plurality of audio signals,” as recited in claim 48. *See id.* at pages 12-13. Thus, for at least these reasons, the Office Action has not established a *prima facie* case of obviousness with respect to claims 39-41, 43, and 47-48.

The proposed combination of Begault and Shennib does not render claims 44-45, 50, and 54-56 unpatentable. *See id.* at pages 13-14.

The Office Action has not explained how the arrangement shown in Shennib teaches, either explicitly or implicitly, the limitations recited in claim 50. *See id.* at pages 13-14. Thus, for at least this additional reason, the Office Action has not established a *prima facie* case of obviousness with respect to claim 50.

The proposed combination of Shennib and Kasai does not render claim 14 unpatentable. *See id.* at pages 14-17. First, the proposed combination does not teach or suggest a loudspeaker at an overhead position directly above the test subject. *See id.* at page 14. Next, the conclusory statement in the Office Action regarding “design choice” is legally insufficient to establish a *prima facie* case of obviousness. *See id.* at pages 15-16. Also, there is no motivation or suggestion to combine Shennib with Kasai. *See id.* at pages 16-17. Shennib and Kasai are nonanalogous art. *See id.* Thus, for at least these

reasons, the Office Action has failed to establish a *prima facie* case of obviousness with respect to claim 14.

The Applicants respectfully submit that the pending claims of the present application should be in condition for allowance for at least the reasons discussed above. The Commissioner is authorized to charge any necessary fees, including the \$250 fee for the Notice of Appeal, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: March 14, 2007

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